



February 16, 2007

SENATE BILL No. 457

DIGEST OF SB 457 (Updated February 13, 2007 12:33 pm - DI 73)

Citations Affected: IC 6-3; noncode.

Synopsis: Verification of withholding exemptions. Requires an employer to verify that an employee is entitled to claim adjusted gross income tax withholding exemptions for more than two individuals. Provides that unless an employer knows an employee's representations are false, the requirement for an employer to verify any additional withholding exemptions claimed by an employee is met if the employer obtains for each additional individual for whom the employee claims a withholding exemption a copy of any document specified in the statute, including a driver's license or Social Security card. Provides that an employer's failure to verify an employee's additional withholding exemptions as required is a Class A misdemeanor. Provides that an employee's submission of a false or fictitious document to an employer for the purpose of claiming more withholding exemptions than the employee is entitled to claim is a Class A misdemeanor.

Effective: January 1, 2008.

Riegsecker, Hershman

January 11, 2007, read first time and referred to Committee on Rules and Legislative Procedure.

January 23, 2007, amended; reassigned to Committee on Tax and Fiscal Policy.

February 15, 2007, reported favorably — Do Pass.

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SB 457—LS 7795/DI 13+



February 16, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 457

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3-4-8 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JANUARY 1, 2008]: Sec. 8. (a) Except as provided in
3 subsection (d) or (l), every employer making payments of wages
4 subject to tax under this article, regardless of the place where such
5 payment is made, who is required under the provisions of the Internal
6 Revenue Code to withhold, collect, and pay over income tax on wages
7 paid by such employer to such employee, shall, at the time of payment
8 of such wages, deduct and retain therefrom the amount prescribed in
9 withholding instructions issued by the department. The department
10 shall base its withholding instructions on the adjusted gross income tax
11 rate for persons, on the total rates of any income taxes that the taxpayer
12 is subject to under IC 6-3.5, and on the total amount of exclusions the
13 taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4).
14 Such employer making payments of any wages:
15 (1) shall be liable to the state of Indiana for the payment of the tax
16 required to be deducted and withheld under this section and shall
17 not be liable to any individual for the amount deducted from the

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individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and IC 6-3.5 the employer is required to withhold.

(b) An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for:

(1) a calendar year reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed ten dollars (\$10);

(2) a six (6) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed twenty-five dollars (\$25); or

(3) a three (3) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed seventy-five dollars (\$75).

An employer using a reporting period (other than a monthly reporting period) must file the employer's return and pay the tax for a reporting period no later than the last day of the month immediately following the close of the reporting period. If an employer files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under this section, section 8.1 of this chapter, or IC 6-2.5-6-1.

(c) For purposes of determining whether an employee is subject to taxation under IC 6-3.5, an employer is entitled to rely on the statement of an employee as to the employee's county of residence as represented by the statement of address in forms claiming exemptions for purposes of withholding, regardless of when the employee supplied the forms. Every employee shall notify the employee's employer within five (5) days after any change in the employee's county of residence.

(d) A county that makes payments of wages subject to tax under this article:

(1) to a precinct election officer (as defined in IC 3-5-2-40.1); and

(2) for the performance of the duties of the precinct election officer imposed by IC 3 that are performed on election day;

is not required, at the time of payment of the wages, to deduct and retain from the wages the amount prescribed in withholding instructions issued by the department.

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(e) Every employer shall, at the time of each payment made by the employer to the department, deliver to the department a return upon the form prescribed by the department showing:

- (1) the total amount of wages paid to the employer's employees;
- (2) the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code;
- (3) the amount of adjusted gross income tax deducted therefrom in accordance with the provisions of this section;
- (4) the amount of income tax, if any, imposed under IC 6-3.5 and deducted therefrom in accordance with this section; and
- (5) any other information the department may require.

Every employer making a declaration of withholding as provided in this section shall furnish the employer's employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the total amount of adjusted gross income tax and the amount of each income tax, if any, imposed under IC 6-3.5, withheld from the employees, on the forms prescribed by the department.

(f) All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of this article shall hold the same in trust for the state of Indiana and for payment thereof to the department in the manner and at the times provided in this article. Any employer may be required to post a surety bond in the sum the department determines to be appropriate to protect the state with respect to money withheld pursuant to this section.

(g) The provisions of IC 6-8.1 relating to additions to tax in case of delinquency and penalties shall apply to employers subject to the provisions of this section, and for these purposes any amount deducted or required to be deducted and remitted to the department under this section shall be considered to be the tax of the employer, and with respect to such amount the employer shall be considered the taxpayer. In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes, shall be personally liable for such taxes, penalties, and interest.

(h) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount

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so deducted from the employee's wages. Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and IC 6-3.5, the department shall, after examining the return or returns filed by the employee in accordance with this article and IC 6-3.5, refund the amount of the excess deduction. However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof. No refund shall be made to an employee who fails to file the employee's return or returns as required under this article and IC 6-3.5 within two (2) years from the due date of the return or returns. In the event that the excess tax deducted is less than one dollar (\$1), no refund shall be made.

(i) This section shall in no way relieve any taxpayer from the taxpayer's obligation of filing a return or returns at the time required under this article and IC 6-3.5, and, should the amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 5 of this chapter.

(j) Notwithstanding subsection (b), an employer of a domestic service employee that enters into an agreement with the domestic service employee to withhold federal income tax under Section 3402 of the Internal Revenue Code may withhold Indiana income tax on the domestic service employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(k) To the extent allowed by Section 1137 of the Social Security Act, an employer of a domestic service employee may report and remit state unemployment insurance contributions on the employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(l) The department shall adopt rules under IC 4-22-2 to exempt an employer from the duty to deduct and remit from the wages of an employee adjusted gross income tax withholding that would otherwise be required under this section whenever:

- (1) an employee has at least one (1) qualifying child, as determined under Section 32 of the Internal Revenue Code;
- (2) the employee is eligible for an earned income tax credit under IC 6-3.1-21;
- (3) the employee elects to receive advance payments of the earned income tax credit under IC 6-3.1-21 from money that would otherwise be withheld from the employee's wages for adjusted gross income taxes; and

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(4) the amount that is not deducted and remitted is distributed to the employee, in accordance with the procedures prescribed by the department, as an advance payment of the earned income tax credit for which the employee is eligible under IC 6-3.1-21.

The rules must establish the procedures and reports required to carry out this subsection.

(m) A person who knowingly fails to remit trust fund money as set forth in this section commits a Class D felony.

(n) An employer who is required under subsection (a) to withhold income tax from payments of wages shall verify that an employee who claims exemptions for more than two (2) individuals under IC 6-3-1-3.5(a)(3), IC 6-3-1-3.5(a)(4)(A), IC 6-3-1-3.5(a)(4)(C), and the withholding instructions issued by the department under subsection (a) is entitled to claim exemptions for more than two (2) individuals. Unless an employer knows an employee's representations are false, the requirement of this subsection is satisfied if the employer obtains from the employee a copy of one (1) of the following for each additional individual for whom the employee claims an exemption:

(1) A birth certificate.

(2) A Social Security card.

(3) A marriage license.

(4) A driver's license or state issued identification card.

(5) A federal document establishing lawful permanent residence or naturalization.

(6) A passport.

(7) A court order establishing paternity.

(o) An employer commits a Class A misdemeanor if the employer knowingly:

(1) pays wages to an employee who has claimed more than two (2) income tax withholding exemptions;

(2) either:

(A) fails to verify the employee's claimed withholding exemptions as required by subsection (n); or

(B) accepts a document described in subsection (n) for verification of the employee's claimed withholding exemptions that is false or fictitious; and

(3) withholds less income tax from the payment of wages to the employee than required by the withholding instructions issued by the department.

(p) An employee commits a Class A misdemeanor if the employee knowingly furnishes to an employer a document

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1 described in subsection (n) that is false or fictitious for the purpose
2 of claiming more income tax withholding exemptions than the
3 employee is entitled to claim under the withholding instructions
4 issued by the department.

5 SECTION 2. [EFFECTIVE JANUARY 1, 2008] IC 6-3-4-8, as
6 amended by this act, applies to taxable years beginning after
7 December 31, 2007.

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 457, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 457 as introduced.)

LONG, Chairperson

 SENATE MOTION

Madam President: I move that Senator Hershman be added as second author of Senate Bill 457.

RIEGSECKER

 COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 457, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 457 as printed January 24, 2007.)

KENLEY, Chairperson

Committee Vote: Yeas 8, Nays 2.

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